

WAYNE M. MANN

IBLA 80-776

Decided April 6, 1981

Appeal from decision of the Utah State Office, Bureau of Land Management, declaring lode mining claims null and void ab initio. U MC 91697 through U MC 91700, U MC 99012 through U MC 99015.

Affirmed.

1. Administrative Procedure: Hearings--Constitutional Law: Due Process--Mining Claims: Hearings--Rules of Practice: Hearings

Due process does not require notice and a prior hearing in every case that an individual is deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

2. Mining Claims: Generally--Mining Claims: Special Acts--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Reclamation Withdrawals--Withdrawals and Reservations: Revocation and Restoration

It is proper to declare mining locations null and void ab initio where the locations were not perfected by performance of the condition precedent set forth in the order opening lands in a reclamation withdrawal to mineral location and entry pursuant to the Act of Apr. 23, 1932, 43 U.S.C. § 154 (1976).

APPEARANCES: Wayne M. Mann, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

This appeal is taken from a decision dated June 26, 1980, of the Utah State Office, Bureau of Land Management (BLM), declaring appellant's unpatented Long Shot 1 through 8 lode mining claims null and void ab initio. The claims were located in sec. 8, T. 40 S., R. 9 E., Salt Lake meridian.

In June 1954 the lands involved were the subject of a first form reclamation withdrawal order issued under authority of the Act of June 17, 1902, 43 U.S.C. § 416 (1976), which precluded mining location, entry and patent. 19 FR 3799 (June 22, 1954). Also, in June 1954, under 43 U.S.C. § 154 (1976), these lands were opened to mining location, entry, and patent subject to the condition precedent, as authorized by the Act, that the express stipulation in the opening order with regard to each mining location thereon "[b]e executed and acknowledged and recorded in the county records and in the United States Land Office at Salt Lake City, Utah, before location is made." 19 FR 3628 (June 18, 1954). ^{1/} The required stipulation reads:

This location is made subject to the provision that if and when the land is actually required for reclamation purposes, it may be utilized by the United States without payment, and any structures or improvements placed on the land which may interfere with contemplated reclamation works will be removed or relocated without expense to the United States, its successors or assigns.

Appellant's claims were located in February 1955, some 8 months after the opening order was published.

P.L. 92-593, 86 Stat. 1311, enacted on October 27, 1972, establishing the Glen Canyon National Recreation Area withdrew, subject to valid existing rights, lands including those here involved, from location entry, and patent under the United States mining laws.

The decision appealed from states that diligent searches of BLM records in Salt Lake City, Utah, revealed no evidence of recordation of the required stipulation. The decision reasoned that since appellant failed to execute and record the required stipulation he had no vested rights protected from the 1972 withdrawal. Accordingly, the claims were declared null and void ab initio.

^{1/} Although the opening order appeared in the Federal Register prior to the date the first form reclamation withdrawal was published, the effective date of the withdrawal was the date the Director, BLM, concurred in the Commissioner of Reclamation's withdrawal made pursuant to Departmental Order No. 2515, dated April 7, 1949. That date was June 11, 1954. 19 FR 3801 (June 22, 1954). Cf. J. P. Hinds, 25 IBLA 67, 83 I.D. 275 (1976).

Appellant states on appeal that his attorney may not have known of the required stipulation. He suggests that he was deprived of property without due process or a hearing, stating that he has spent vast sums of money on the claims which have recently become highly valuable because they contain minerals used in atomic reactors. Appellant asserts that he has used his mining claims as collateral in negotiations with OPEC nations and Japan, and requests that the claims be restored to him in the name of the national interest.

[1] Under the circumstances of this case appellant's due process rights are preserved by this appeal. There are no disputed questions of fact which could be clarified by an evidentiary hearing. The validity of appellant's claims turns on the effect to be given facts of record concerning the status of his locations, unaccompanied as they were by the required stipulation. Consequently, no hearing is required. Dorothy Smith, 44 IBLA 25 (1979); H. B. Webb, 34 IBLA 362 (1978). See also Vearl Martin, 18 IBLA 234, 236 (1974).

[2] Neither appellant's unawareness of the requirement for a stipulation nor his expenditure of funds or use of the claims in business dealings can bestow on him any rights not authorized by law. In James C. Forsling, 56 I.D. 281, 285-86 (1938), the Department elaborated on the responsibility of a claimant to apprise himself of the status of the land:

One failing to inspect public records concerning lands, private or public, in which he is financially interested is negligent at his peril. He is chargeable with knowledge of the law affecting the land sought and of the record of its status as well, and must suffer the consequences of any lack of diligence in regard thereto. The United States Government is at great pains to put at the disposal of the public all material facts as to the public lands and not only in the General Land Office at Washington but in every land district of the country maintains a local land office and an elaborate registry system of township plats, entry and tract books posted to date for the express purpose of making available and conveniently accessible to all comers the essential facts, not merely past but current, concerning every tract in the district. Such maintenance of such records constitutes notice of their content and charges the public therewith.

The lands involved were the subject of the reclamation withdrawal order and the condition precedent set out in the opening order. Both orders were published in the Federal Register in June 1954, and appellant was on constructive notice thereof. During the period the lands involved were open to mineral location, the purported mining locations were not perfected because the locator failed to execute and record in the county records and in the Bureau of Land Management, Salt Lake City, Utah, the stipulation for each mining location required by the

opening order as a condition precedent to the vesting of any rights in the locator. Vearl Martin, supra. The decision appealed from properly declared the mining claim locations null and void ab initio.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Douglas E. Henriques
Administrative Judge

